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Review of North Dakota Decisions

A E. Angus

THE PRESIDENT'S PAGE

As the session of the Legislature starts, we all realize anew that we have too many laws, and yet know that changing conditions demand new legislation. The spirit of law making in this country has been wrong. Men, seeing an evil, assume that a law can remedy it, and rush to ill considered legislation without any study of the nature of the evil or the effective remedy. Law can never be a panacea for all our troubles. For such evils as it can alleviate, it can do so much more effectively if the situation is studied carefully beforehand, and legislation framed with the aid of lawyers who have had experience in the working of existing laws.

Lawyers ought to be in the forefront of this work. The Bar Association, as a body, ought to be in the forefront when proposals have been carefully discussed at its meetings and a policy adopted. It is open to grave doubt, though there may be emergencies justifying exceptions, whether the Association as such should take any stand on proposed legislation that has not been the subject of consideration at its annual meeting.

On subjects that have not been considered by the Association, but come up in the Legislature, let us hope that the lawyers of the State, as individuals, will give them their consideration and study, and give the Legislature such aid as they are able in arriving at a wise solution.

On one subject particularly there is practical unanimity, and the Association has taken a definite stand. That is for a substantial increase of salary for judges. The Committee on Legislation is supporting the bill, under a mandate from the Association. All state salaries are probably too low, but the evil is a comparatively minor one as applied to officials who hold office for a short term, and a crying disgrace as applied to judges whose life work is on the Bench. A judge, once elected, loses his law practice, and can with great difficulty regain it. The time is fast approaching when we cannot get efficient men on the Bench for the salaries we pay. A few thousand dollars spent in paying good men will save itself many times over. It is to be hoped that the lawyers of the State as a whole will take an active interest in this act of belated justice.

We should make no apology for lobbying. Honest and aboveboard lobbying is honorable and useful activity. No men are perfect, and the legislators have far too much to do to be able to give every proposition the study it deserves. They should, and I believe they will, welcome aid given them in good faith. The lobbying which is reprehensible, and which has brought the word into disrepute, is the endeavor to secure or block legislation in behalf of special interests, while concealing the lobbyer's connection with or employment by such interests. That is plain dishonesty, as much as if a Judge on the Bench were to be secretly retained by one of the parties to a lawsuit.—PRESIDENT JOHN H. LEWIS.

REVIEW OF NORTH DAKOTA DECISIONS

A. E. ANGUS

Hulett vs. Snook. Board of Township Supervisors entered an order laying out a public highway and awarding damages to the owner of the land taken for highway purposes. The owner appealed to district court, and thereafter the Board entered a second order, the first order being defective, in that it did not describe the land properly. No appeal taken from the second order. Trial on appeal from first order, plaintiff appearing in person and by attorney and stipulating that the appeal

should relate to the amended order. Verdict for Board. Motion to vacate judgment was denied. HELD: Trial court was correct in denying motion to vacate judgment and dismiss proceedings as plaintiffs are estopped by their stipulation and acquiesence in the trial.

State vs. Ehr. Defendant was arrested on a complaint charging him with violating Chapter 142, Laws of 1927, relating to hours of employment of females. Defendant demurred to the complaint, alleging that it did not state a public offense because Chapter 142 is unconstitutional, being in violation of certain articles of the State Constitution and the 14th Amendment to the Constitution of the United States. Demurrer was sustained in County Court. HELD: Reversed. The eight hour law does not unreasonably interfere with the right of contract, and is valid under the police power of the State. That part of the law under which complaint is made is sufficient to stand alone and is not affected by subsequent amendments which may be unconstitutional, even though such amendments contain a repealing clause.

Pfeiffer vs. Workmen's Compensation Bureau. Pfeiffer was injured in the course of employment by a wrench which hit him on or near the left eye while repairing an automobile. A tumor was found shortly after, which was not originally caused by the injury, and had, at the time of injury, resulted in about 16 per cent loss of vision of one eye and 50 per cent loss of vision of the other. Claim was denied on the ground of pre-existing disease. The evidence, on trial, showed that the accident had probably accelerated the pre-existing condition, which was more or less dormant, total blindness resulting within a few months after injury. HELD: If competent evidence traces a causal connection between accelerated condition of the affliction and the accident occurring in the course of employment, and if no other cause of acceleration is shown, then claimant is entitled to recover even though the origin of such affliction is not shown.

Oberg vs. Workmen's Compensation Bureau. Plaintiff was in the employ of Johnson, a sub-contractor for Schultz Bros., who were insured under the Compensation Law. After finishing work for Johnson, claimant went to Williston on a new job. Some unused dynamite caps were left at the site of the former road work. Johnson offered to pay Oberg to destroy the caps. Plaintiff returned from Williston, and while visiting at the farm where the caps were located, attempted to destroy the caps by exploding them, using a fuse. Several were exploded singly, then the balance were placed in a stump and fuse applied. Due to shortness of the fuse, the explosion occurred before plaintiff could get away, resulting in total blindness. The Bureau denied the claim on the grounds: 1. Plaintiff was an independent contractor; 2. If an employee, it was casual employment and not in the usual course of the employer's business. HELD: Plaintiff was an employee, not an independent contractor, and was injured in the course of employment.

Streeter vs. Farmers Press. Suit for libel, plaintiff claiming the defendant published a defamatory article, the more material part of which read: "It is now developing by unmistakable evidence that this was a trumped up political scheme plotted as far back as last April, through which it was expected to land the Record for official paper, by means of a planned, deliberate violation of the election laws of the

State. It is apparent that he printed these ballots without rotating the names intentionally and for the designed purpose of taking an unfair advantage over the Free Press. This act of perfidy on the part of Frisky Buckles, occurring at the primaries is not so fatal to the Free Press as had it been pulled off in the fall, and we are glad he exposed this crookedness in the primary." Verdict for plaintiff. HELD: Affirmed. The publication exceeds fair comment and criticism as the libelous statements are set forth as facts.

DECLARATORY JUDGMENTS

In the December issue of the Los Angeles Bar Association Bulletin we find an article by Hon. L. R. Yankwich, Judge of the Superior Court, in which he designates some recent uses or applications of the Declaratory Judgments Act.

In the first reported California case, *Blakeslee vs. Wilson,* 190 *Cal.* 479, it was resorted to by an attorney for a determination of his rights under a contract of employment on a contingent fee basis. As the question arose on demurrer, the Supreme Court, while upholding the constitutionality of the statute, had no occasion to determine what relief could or could not be granted under it.

In *James vs. Hall,* 55 *Cal. App. Dec.* 355, it was used to determine a person's rights to certain motion picture films and productions.

Again, where the record showed that a controversy not only existed but was being continually waged as to the rights of parties under a lease, the Court, in *Lane Mortgage Co., vs. Crenshaw,* 56 *Cal. App. Dec.* 1163, held it to be the duty of the trial court to determine such rights.

The Kansas statute has been used in a number of cases. In one case, *State vs. Kansas City,* 110 *Kan.* 603, 204 *Pac.* 690, the statute was employed to determine the right of a city to issue internal improvement bonds, bearing a rate of interest greater than five per cent, without reserving the privilege of prepayment at the end of five years, and the Court said this:

"The proceedings in this case serve to illustrate operation of the Declaratory Judgment Act. Execution of the city's internal improvement program placed it in this dilemma: If privilege of prepayment were not written in the bonds, the city and its officers were exposed to prosecution by the State for abuse of corporate power and violation of law, and the securities might not be marketable. If privilege of prepayment were written in the bonds, a heavy financial burden would be placed on the taxpayers, perhaps unnecessarily. Formerly, the city would have been compelled to choose one course or the other, and abide the consequences. The law officers of the State could not give a binding interpretation of the statute, and, because of its ambiguity, could not consent to the course which the city claimed it was authorized to pursue. Therefore, a controversy existed, justifiable under the Declaratory Judgment Act. The action was commenced in the district court on February 7, 1922, and the defendant answered instanter. The cause was heard on the petition and answer, and a stipulation that the pleadings stated the facts. The declaration of the district court was rendered February 7, and the appeal was lodged in this Court on February 10. This Court was in session when the appeal was filed. Because of the public importance of the question involved, the cause was advanced for immediate hearing, and on February 10 it was submitted for final decision, an oral argument and briefs of counsel which accompanied the